

REMARKS/ARGUMENTS

In the office action dated May 5, 2005, the previous rejections were withdrawn, and claims 1-11 and 15-18 were rejected under 35 U.S.C. § 102(e) over U.S. Patent No. 6,285,856 to *Aguayo*. Claim 28 was also rejected under 35 U.S.C. § 103(a) over *Aguayo*, and claims 19 and 29-39 were rejected under 35 U.S.C. § 103(a) over *Aguayo* in view of the Background of the Invention.

The present amendment updates the priority claim in paragraph [01] to recite the patent number of the issued parent case, and corrects a clerical error in the dependent claim numbering in claim 35. No new matter is added by the amendment, and claims 1-11, 15-19, and 28-39 are pending in the application. Reconsideration and withdrawal of the rejections is respectfully requested in light of the remarks that follow.

Interview Summary

Applicant's representative would like to thank Examiner Desir for granting a telephonic interview on October 14, 2004. During the interview, it was agreed that the previous final office action of April 20, 2004, would be withdrawn, and a new non-final office action would be issued.

The rejection of the claims over *Aguayo* is addressed

As noted above, claims 1-11 and 15-18 were rejected under 35 U.S.C. § 102(e) over U.S. Patent No. 6,285,856 to *Aguayo*, claim 28 was rejected under 35 U.S.C. § 103(a) over *Aguayo*, and claims 19 and 29-39 were rejected under 35 U.S.C. § 103(a) over *Aguayo* in view of the Background of the Invention. These rejections are respectfully traversed because *Aguayo* fails to describe or suggest all the elements recited in independent claims 1, 6, 7 and 15.

Claim 1 includes "the host terminal is operable to: provide a test signal to the user drop." Claim 1, lines 4-5. *Aguayo* does not disclose or suggest the transmission of a test signal, but instead describes generation and reception of control or polling signals. See *Aguayo*, column 7, lines 1-6, column 8, lines 8-14. These control or polling signals transmit directions to the

receiving unit to conduct a test or report a status. For example, the signal can contain a command that directs the unit to test the strength of cable signal being received at the unit and report the results. *See Aguayo*, column 7, lines 1-6. The signal, however, is not a test signal that provides a standard or reference that can be accessed at the user drop to test the performance capability of a communication network. For example, the test signals provided in the present invention include video test signals used to test the quality of a video displays, and data test signals that include data files of known size and content that are used to verify a data transfer rate and identify errors and losses of in the data. *See, e.g.*, Specification, page 6, lines 21-28.

Because the control and polling signals described in *Aguayo* are not test signals, and because *Aguayo* neither describes nor suggests providing test signals, claim 1 is allowable over the reference. Similarly, because claims 6, 7, and 15 include providing or receiving a test signal, these claims are also allowable over *Aguayo* as well. Claims 2-5, 8-11, 16-18 and 28-39, which depend from the claims 1, 6, 7, and 15, are allowable over *Aguayo* for at least the same reasons. Accordingly, withdrawal of the rejections of claims 1-11 and 15-18 under § 102(e) over *Aguayo*, claim 28 under § 103(a) over *Aguayo*, and claims 19 and 29-39 under § 103(a) over *Aguayo* in view of the Background of the Invention, is respectfully requested.

Conclusion

In view of the foregoing, Applicant believes all claims now pending in this application are in condition for allowance. The issuance of a formal Notice of Allowance at an early date is respectfully requested.

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PATENT

If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned at 303-571-4000.

Respectfully submitted,



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